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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120813333-3107-02]

RIN 0648-BC28

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 17 to the Salmon Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule under authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement Amendment 17 to the Pacific Coast Salmon Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (Salmon FMP). NMFS approved Amendment 17 on February 5, 2013. Among other things, Amendment 17 revises the maximum fishing mortality threshold (MFMT) for Quillayute fall coho, revises the FMP to correct typographical errors, updates reporting measures to reflect new technology, and updates or removes other obsolete or unnecessary language. This rule implements certain portions of Amendment 17; specifically, it discontinues the public comment period for final management measures that are published in the Federal Register and updates mechanisms for obtaining information on management of the fishery. NMFS also makes minor updates to regulations unrelated to Amendment 17.

DATES: This final rule is effective [insert 30 days after publication in Federal Register].

ADDRESSES: This final rule is also accessible on the Web site of NMFS' Northwest Region (<http://www.nwr.noaa.gov>). The current Salmon FMP, through Amendment 17 will be made available on the Pacific Fishery Management Council's Web site (<http://www.pcouncil.org/>).

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206-526-4323, or Heidi Taylor at 562-980-4039.

SUPPLEMENTARY INFORMATION:

The Pacific Fishery Management Council (Council) developed Amendment 17 to revise the MFMT for Quillayute fall coho and make several minor revisions to update language and technology used in FMP, including discontinuing a public comment period after the annual salmon management measures have been published in the Federal Register as a final rule.

NMFS determined that the actions of Amendment 17 have all either been previously analyzed in a NEPA document or qualify for categorical exclusion (CE) from further NEPA analysis under NAO 216-6. The Council took final action on Amendment 17 in September 2012 and transmitted the amendment to NMFS on November 5, 2012. NMFS published a Notice of Availability of Amendment 17 in the Federal Register (77 FR 67327, November 9, 2012) to notify the public of the amendment and invite comments. NMFS published a proposed rule in the Federal Register (77 FR 75101, December 19, 2012) to notify the public and invite comments on the proposals. NMFS received two comment submissions. The comments are summarized and responded to in the "Response to Comments" section of this rule.

As described in the proposed rule, Amendment 17 removes mention of a public comment period after final management measures are published in the Federal Register. Annual management measures for the salmon fishery are published in the Federal Register as final rules;

public comment periods are not applied to final rules. The public has an opportunity to comment on these measures throughout the Council's annual process of setting them; that process includes two Council meetings and public hearings held in Washington, Oregon, and California. The Council publishes a notice in the Federal Register each December that details the process for setting the next year's annual management measures and solicits comments. The Council's notice provides the schedule for Council meetings and public hearings, as well as the schedule of availability of planning documents, including Preseason Report II which contains the salmon management alternatives the Council adopts in March for further consideration at its April meeting where it adopts a final recommendation for the fishing season. The Council's notice informs the public of how to request copies of the preseason planning documents, how to view the documents online, and how to submit comments to the Council by mail, fax, email, or the Federal Rulemaking Portal: www.regulations.gov. All comments received are reviewed by both the Council and NMFS.

The other details of Amendment 17 were described in the proposed rule (77 FR 75101, December 19, 2012) and are not repeated here. This final rule identifies changes to the regulations under 50 CFR Part 660 subpart H to implement Amendment 17 and additional updates as described in the proposed rule.

Response to Comments

NMFS invited comments on Amendment 17 and the proposed rule. Two comments were received, including a letter of "no comment" submitted by the U.S. Department of the Interior. The one public comment received was opposed to approval of "Frankenfish." While NMFS appreciates receiving public comment, the issue of "Frankenfish" is not relevant to Amendment 17.

Changes From Proposed Rule

This final rule includes changes to the existing regulations at 50 CFR 660.401 et seq. to implement Amendment 17 and additional updates. These are unchanged from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendment 17, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Northwest Regional Administrator has determined that the actions of Amendment 17 have all either been previously analyzed in a NEPA document or qualify for categorical exclusion from further NEPA analysis under NAO 216-6.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact the proposed rule, if adopted, would have on small entities. NMFS received no comments to the RIR/IRFA, and a final regulatory flexibility analysis (FRFA) was prepared. The commercial entities directly regulated by the Pacific Council's Fishery Management Plan are non-tribal commercial trollers, tribal commercial trollers, and charter boats. According to the Small Business Administration (SBA), a small commercial fish harvesting business is one that has annual receipts under \$4.0 million, a small charter boat business is one that has annual receipts under \$7.0 million, and a small processor is one that employs 500 employees or fewer. During 2011, the affected fleets consisted of estimated 802 non-tribal trollers, 40 to 50 tribal trollers, and 438-495 charter boats. Based on Pacific Coast Fisheries Information Network (PacFIN) data, a total of 802 non-tribal

vessels participated in the West Coast commercial salmon fishery in 2011. This number is 25 percent more than participated in 2010 (642), two-and-a-half times the number that participated in 2009 (313), and three-and-a-half times the number participating in 2008 (221). Based on the SBA definitions and available information, the IRFA determined that all these entities are small entities. The RIR/IRFA also determined that these regulations are administrative in nature. Consequently, these regulations are not expected to meet any of the tests of having a "significant" economic impact on a "substantial number" of small entities. There are no additional projected reporting, recordkeeping, and other compliance requirements of this rule. No Federal rules have been identified that duplicate, overlap, or conflict with this action. The FRFA concurs with the findings of the RIR/IRFA.

The final rule is administrative in nature and does not affect ESA listed species. However, NMFS has issued a number of ESA biological opinions that address the impacts of the Council managed salmon fisheries on listed salmonids as follows: March 8, 1996 (Snake River spring/summer and fall Chinook and sockeye), April 28, 1999 (Oregon Coast natural coho, Southern Oregon/Northern California coastal coho, Central California coastal coho), April 28, 2000 (Central Valley spring Chinook), April 27, 2001 (Hood Canal summer chum 4(d) limit), April 30, 2004 (Upper Willamette Chinook, Upper Columbia spring Chinook, Lake Ozette sockeye, Columbia River chum, Puget Sound Chinook), June 13, 2005 (California coastal Chinook), April 28, 2008 (Lower Columbia River natural coho), and April 30, 2010 (Sacramento River winter Chinook, and listed Puget Sound yelloweye rockfish, canary rockfish, and bocaccio), and April 26, 2012 (Lower Columbia River Chinook). NMFS reiterates its consultation standards for all ESA-listed salmon and steelhead species in an annual Guidance letter to the Council. In 2009, NMFS consulted on the effects of fishing under the Salmon FMP

on the endangered Southern Resident Killer Whale Distinct Population Segment (SRKW) and concluded the salmon fisheries were not likely to jeopardize SRKW (biological opinion dated May 5, 2009).

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with Tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian Tribe with Federally recognized fishing rights from the area of the Council's jurisdiction. This tribal representative on the Council has agreed with the provisions that apply to tribal vessels.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 11, 2013.

Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs,
performing the functions and duties of the Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq. and 16 U.S.C. 773 et seq.

2. In § 660.402, revise the definition for “Dressed, head-off length of salmon” to read as follows:

§ 660.402 Definitions.

* * * * *

Dressed, head-off length of salmon means the shortest distance between the midpoint of the clavicle arch and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort to any force or mutilation of the fish other than removal of the head, gills, and entrails.

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3. In § 660.406, revise paragraph (c) to read as follows:

§ 660.406 Exempted fishing.

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(c) Each vessel participating in any exempted fishery recommended by the Council and allowed by NMFS is subject to all provisions of this subpart, except those portions which relate to the purpose and nature of the exempted fishery. These exceptions will be specified in a permit issued by the Regional Administrator to each vessel participating in the exempted fishery and that permit must be carried aboard each participating vessel.

4. In § 660.408, revise paragraphs (d)(1)(vii) and (d)(2)(v) to read as follows:

§ 660.408 Annual actions.

* * * * *

(d) * * *

(1) * * *

(vii) Other inseason provisions. Any increase or decrease in the recreational or commercial allowable ocean harvest resulting from an inseason restructuring of a fishery or other inseason management action does not require reallocation of the overall non-treaty allowable ocean harvest north of Cape Falcon between the recreational and commercial fisheries. Inseason redistribution of subarea quotas within the recreational fishery or the distribution of allowable coho catch transfers from the commercial fishery among subareas may deviate from the preseason distribution. Inseason management actions may be taken by the Regional Administrator to assure meeting the primary objective of achieving all-species fisheries without imposing Chinook restrictions in each of the recreational subareas north of Cape Falcon. Such actions might include, but are not limited to: Closure from 0 to 3, 0 to 6, 3 to 200, or 5 to 200 nm from shore; closure from a point extending due west from Tatoosh Island for 5 nm, then south to a point due west of Umatilla Reef Buoy, then due east to shore; closure from North Head at the Columbia River mouth north to Leadbetter Point; change in species that may be landed; or other actions as prescribed in the annual management measures.

* * *

(2) * * *

(v) Inseason reallocation. No later than August 15 each year, the Salmon Technical Team will estimate the number of coho salmon needed to complete the recreational seasons. Any coho salmon allocated to the recreational fishery that are not needed to complete the recreational seasons will be reallocated to the commercial fishery. Once reallocation has taken place, the remaining recreational quota will change to a harvest guideline. If the harvest guideline for the recreational fishery is projected to be reached on or before Labor Day, the Regional Administrator may allow the recreational fishery to continue through the Labor Day

weekend only if there is no significant danger of impacting the allocation of another fishery or of failing to meet an escapement goal.

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5. In § 660.411, revise paragraphs (b) and (c) to read as follows:

§ 660.411 Notification and publication procedures.

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(b) Public comment. If time allows, NMFS will invite public comment prior to the effective date of any action published in the Federal Register.

(c) Availability of data. The Regional Administrator will compile in aggregate form all data and other information relevant to the action being taken and will make them available for public review upon request, contact information will be published annually in the Federal Register and announced on the telephone hotline. For actions affecting fisheries occurring primarily or exclusively in the fishery management area seaward of California, information relevant to the action also will be made available upon request by the Southwest Region, NMFS.

~~[FR Doc. 2013-03477 Filed 02/13/2013 at 8:45 am; Publication Date: 02/14/2013]~~